

6/19/01

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

Paper No. 12
CEW

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Uproar Ltd.

Serial No. 75/749,128

Gary H. Fechter and Meredith D. Pikser of Hall, Dickler,
Kent, Goldstein & Wood for Uproar Ltd.

Michele Lynn Swain, Trademark Examining Attorney, Law Office
103 (Dan Vavonese, Acting Managing Attorney).

Before Hohein, Walters and Rogers, Administrative Trademark
Judges.

Opinion by Walters, Administrative Trademark Judge:

Uproar Ltd. has filed a trademark application to
register the mark TRIVIA BLITZ for "entertainment in the
nature of on-line trivia games provided via a global
computer information network."¹ The record includes a
disclaimer of TRIVIA apart from the mark as a whole.

The Trademark Examining Attorney has issued a final
refusal to register under Section 2(d) of the Trademark Act,
15 U.S.C. 1052(d), on the ground that applicant's mark so

¹ Serial No. 75/749,128, in International Class 41, filed July 13, 1999,
based on use in commerce, alleging first use and use in commerce as of
August 17, 1997.

resembles the mark BLITZ, previously registered for "entertainment services in the nature of an on-line interactive sports related game,"² that, if used on or in connection with applicant's goods, it would be likely to cause confusion or mistake or to deceive.

Applicant has appealed. Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested. We affirm the refusal to register.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See *In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); and *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999) and the cases cited therein.

The Examining Attorney contends that the word TRIVIA in applicant's mark is merely descriptive and, thus, the word

² Registration No. 2,062,056 issued May 13, 1997, to Sportsline USA, in International Class 41.

BLITZ is the dominant portion of applicant's mark; that the dominant portion of applicant's mark is identical to registrant's mark in its entirety; that applicant's trivia game encompasses sports trivia; and that both applicant's and registrant's services, as identified, are games offered over the Internet.

In support of her position, the Examining Attorney submitted a dictionary definition of "trivia" as "unimportant or little-known details or information"; excerpts of articles from the LEXIS/NEXIS database containing the words "trivia," "sports" and "online"; copies of third-party registrations that recite services including both applicant's and registrant's identified services in connection with a single mark; and copies of pages from both applicant's and registrant's Internet web sites.

Applicant's web site home page, which is one of the specimens of record in the application, includes links to various games offered by applicant, including TRIVIA BLITZ and UPROAR SPORTS. Registrant's web site includes links to sports trivia games.

The following are a representative sample of the LEXIS/NEXIS excerpts submitted by the Examining Attorney:

Are you ready for a challenge? Visit our web site to play "The Brain Buster" online. How many sports-trivia questions can you answer correctly as you race the clock? (*Sports Illustrated for Kids*, July 2000.)

"Expect to play games on wireless devices as technology advances" - Later on, you'll start to see more nontraditional games like online sports fantasy leagues or trivia games where users can compete for prizes over their online phone network. (*The Dallas Morning News*, May 18, 2000.)

"Contestants" vie simultaneously for cash and other prizes on Gamesville's online trivia, sports and card "gameshows." (*The Boston Herald*, November 24, 1999.)

With revenues of \$26 million last year, NTN provides interactive television and on-line programming, including sports and trivia games for patrons in restaurants, bars, hotel lounges and other facilities in North America. (*The Providence Journal-Bulletin*, August 7, 1997.)

Applicant contends that, because the word TRIVIA describes, essentially, the subject matter of applicant's game, it is a significant aspect of applicant's mark as a whole and effectively distinguishes applicant's mark from registrant's mark. Applicant contends, further, that its services are unrelated to registrant's services because they are sold through different trade channels, *i.e.*, they are available on different web sites; and there is no "per se" rule that all on-line games are related.

We take judicial notice of the following definition of "blitz" in *The American Heritage® Dictionary of the English Language* (3rd ed. 1996):

1. a. A blitzkrieg. b. A heavy aerial bombardment. 2. An intense campaign: a media blitz focused on young voters. 3. *Football*. A defensive play in which one or more linebackers or defensive backs charge through the line of scrimmage at the snap in an

attempt to overwhelm the quarterback,
especially in a passing situation.

Applicant contends that, in view of the definitions of "trivia" and "blitz," both applicant's mark, TRIVIA BLITZ, and registrant's mark, BLITZ, are weak marks in connection with their respective services and entitled to a limited scope of protection. In support of this contention, applicant submitted copies of third-party registrations for marks incorporating the term BLITZ for various toys, games and entertainment products and services.³ The third party registrations include the following marks and goods or services:

BLITZ - computer and video football games on tape, CD, etc. and hand-held units for playing football games via video and coin-operated arcades;

BJ BLITZ BLACKJACK - entertainment services of providing linking equipment for gaming machines (BLACKJACK disclaimed);

ALPHABLITZ - board and card games;

60-SECOND BLITZ - equipment for skill and action games;

BIG RED BLITZ - tickets for playing games of chance;

BLITZBALL - entertainment services in nature of a short-court version of basketball games;

³ We have considered the copies of registrations submitted with applicant's June 22, 2000 response. Subsequently, applicant submitted a list of registrations, which is not acceptable evidence of the existence of those registrations. Applicant also submitted copies of registrations with its brief, which evidence is untimely. In view thereof, and because the Examining Attorney objected, we have not considered the latter two submissions.

BLITZ-BACKGAMMON - computer game programs.⁴

We consider, first, whether applicant's mark and the registered mark, when viewed in their entireties, are similar in terms of appearance, sound, connotation and commercial impression. The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impressions that confusion as to the source of the goods or services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Furthermore, although the marks at issue must be considered in their entireties, it is well settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985).

As applicant admits, both in its brief and by its disclaimer, the term TRIVIA is merely descriptive of the subject matter of applicant's games. However, contrary to

⁴ Respectively, Registration Nos. 2,215,166 and 2,206,268; 2,236,060; 2,200,658; 2,017,628; 1,868,469; 1,837,469; and 1,822,457.

applicant's contention that this term distinguishes applicant's mark from registrant's mark, we find that, because of the highly descriptive nature of the term TRIVIA in relation to applicant's services, the term BLITZ is likely to be perceived as the dominant portion of applicant's mark.

Additionally, even though BLITZ, in view of the judicially noticed definition thereof, would seem to be a suggestive rather than arbitrary term in connection with both applicant's and registrant's services, it has a substantially similar connotation and engenders a substantially similar overall commercial impression in both marks. Moreover, while applicant has pointed to a number of third-party registrations incorporating the term BLITZ, we conclude from a review thereof that the third-party registrations and registrant's registration for BLITZ coexist largely because of differences in the respective goods and services. However, even if we consider the cited mark to be weak, due to its suggestiveness, the owner of a registration for a weak mark is still entitled to protection against registration by a subsequent user of the same or similar mark for the same or related goods. *See Hollister Incorporated v. Ident A Pet, Inc.*, 193 USPQ 439 (TTAB 1976).

Considering the marks in their entireties, we find that the overall commercial impressions of applicant's mark

TRIVIA BLITZ and registrant's mark BLITZ are substantially similar.

Turning to consider the services involved in this case, we note that the question of likelihood of confusion must be determined based on an analysis of the goods or services recited in applicant's application vis-à-vis the goods or services recited in the registration, rather than what the evidence shows the goods or services actually are. *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). See also, *Octocom Systems, Inc. v. Houston Computer Services, Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1992); and *The Chicago Corp. v. North American Chicago Corp.*, 20 USPQ2d 1715 (TTAB 1991).

Further, it is a general rule that goods or services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that goods or services are related in some manner or that some circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which could give rise, because of the marks used therewith, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of each party's goods or services. *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991), and cases cited therein.

In this case, applicant's services are on-line trivia games and registrant's services are on-line interactive sports games. The evidence establishes that trivia games encompass sports trivia games; that applicant, in fact, provides sports trivia games at its site, albeit under a different mark; and that registrant's site provides links to sports trivia games. Based on this evidence, we find that the services are closely related and, further, that applicant's identified services encompass registrant's identified services.

Therefore, we conclude that in view of the substantial similarity in the commercial impressions of applicant's mark, TRIVIA BLITZ, and registrant's mark, BLITZ, their contemporaneous use on the closely related services involved in this case is likely to cause confusion as to the source or sponsorship of such services.

In view of the third party registrations incorporating the term BLITZ, to the extent that there is any doubt about the merits of refusing registration to applicant, we resolve this doubt in favor of registrant. Applicant, as the newcomer, has the opportunity of avoiding confusion and is obligated to do so. *See TBC Corp. v. Holsa Inc.*, 126 F.3d 1470, 44 USPQ2d 1315 (Fed. Cir. 1997).

Decision: The refusal under Section 2(d) of the Act is affirmed.